

REMARKS

This is intended as a full and complete response to the Office Action dated January 12, 2005, having a shortened statutory period for response set to expire on April 12, 2005. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-10, 12-16, 20-29 and 42 are pending in the application. Claims 1-8, 10, 12-16, 20-21, 25-29 and 42-46 remain pending following entry of this response. Claims 1, 20, 25 and 42 have been amended. Claims 9 and 22-24 have been cancelled. New claims 43-46 have been added to recite aspects of the invention. Applicants submit that the amendments and new claims do not introduce new matter.

Claims 1-10, 12-16, 20-29 and 42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Tedesco et al.* (US 6,085,888, hereinafter *Tedesco*) in view of *Freeney, Jr.* (US 6,490,443, hereinafter *Freeney*) and further in view of Japanese patent (JP411039547A) by *Koji* (hereinafter *Koji*). Applicants respectfully traverse the rejection.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2142. To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2143. The present rejection fails to establish at least the first and third criteria.

Each of Applicants' pending claims recite a method for operating a reservation control system wherein the system, upon receiving a request from a computer, determines if the requested item is available at a vending machine, and if so, reserves the item at that vending machine. The Examiner concedes that neither *Tedesco* nor *Freeney* teach reserving a vending machine item to ensure availability of the item in satisfaction of the reservation request. However, the Examiner argues as follows:

"Koji teaches a system that enables a purchaser to surely purchase a desired article without worrying about the presence/absence of stock by preferentially providing a reserved article to the purchaser who made the reservation." (Examiner's action, page 3.)

Lack of Motivation

Respectfully, Applicants submit that the Examiner errs in this conclusion because, first of all, there is no motivation to combine the references in the manner suggested by the Examiner. *Freney* teaches short-range communications that can occur within a predetermined distance between a wireless device and a vending machine. (See, e.g., Col. 30, lines 2-11; and Figure 28.) Thus, the vending machine is only operable by the user of a wireless device when the user is within the predetermined distance. (See, e.g., Figure 28.) This distance is necessarily one allowing the user immediate access to the vending machine because the item(s) purchased and dispensed must be immediately retrieved by the user. In fact, the purpose of the *Freney* invention is only to provide a means of payment for the vending machine items. (See, e.g., Col. 30, lines 56-60.) The user must still have physical access to the vending machine to make the item selections using the physical interface (e.g., keypad) of the vending machine. Accordingly, not only does *Freney* not teach reserving an item at a vending machine (as the Examiner concedes), *Freney* teaches away from any suggestion of reservation because reservation is necessarily counter to immediate purchase and retrieval at the vending machine. That is, since the user of *Freney* is physically at the vending machine making the purchase and expecting the item to be dispensed, a reservation of the item is nonsensical since the user would then not receive the purchased item. Therefore, a person skilled in the art would not be motivated to combine *Freney* with the other cited references as suggested by the Examiner. Accordingly, Applicants respectfully request that the rejection be withdrawn and the claims be allowed.

All Claim Limitations Not Taught

Further, the prior art references do not teach or suggest all the claim limitations. Specifically, none of the references teach calculating a service charge based on how

long an item was reserved prior to being picked up by a customer, as in, e.g., claims 20 and 21. The Examiner cites *Tedesco*, Figure 4, as teaching this element. Respectfully, the Examiner errs. First, *Tedesco* does not teach reserving an item in a vending machine, as claimed. Examiner cites *Tedesco* at column 8, lines 3-17 and column 9, lines 34-50 for the proposition that an item is reserved. Applicants respectfully submit that the cited sections show that in no sense of the word has an item been reserved. Column 8, lines 3-17 and column 9, lines 34-50 both demonstrate that *Tedesco* uses forecasted demand analysis to determine the "likely" number of items to be redeemed before the next restocking. Column 9, lines 34-50, which the Examiner relies on, specifically states that if the demand for a product has been higher than estimated, the machine may be out of inventory when a purchaser attempts to make a purchase, in which case "CPU 126 causes display 126 [sic] to output a message indicating "insufficient inventory". Col. 9, lines 47-48. Even where the user of *Tedesco* has subscribed to the item, the item may still be out of stock as is evidenced by Figure 9 of *Tedesco* that describes the subscription redemption process. Specifically, step 912 of Figure 9 is described as including the step of "verifying that vending machine 100 has not sold out of the product associated with the received redemption code." Column 8, lines 46-47. If the item were "held" for the subscriber, then it could not be sold out. Therefore, it is clear that in no sense does *Tedesco* hold a particular item for a particular user, as claimed. In contrast, the present claims specifically recite that the item is held for the purchaser making the reservation. Therefore, unless the reservation lapses, the item cannot be out of stock when the purchaser comes to retrieve it.

It follows, therefore, that Figure 4 cannot, and does not, teach calculating a service charge on the basis of how long an item is reserved prior to pick up. In other words, if *Tedesco* does not teach reserving an item, then it cannot teach calculating a fee on the basis of reserving an item. In fact, Figure 4 is of a table containing the terms of a subscription. The subscription duration field 416, which the Examiner apparently refers to, contains "the amount of time for which the subscription is valid" (col. 5, 60-62), not a length of time an item was reserved. As will be described below, the subscription duration field 416 is used to calculate an expiration time/date after which the subscription is no longer valid. Further, the price of the subscription (contained in the

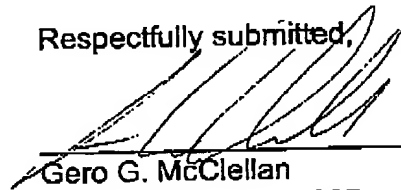
subscription price field 414) is predetermined and charged to the user at the time of purchase, and not calculated on the basis of the length of reservation. This is described by *Tedesco* with respect to Figure 7, which describes the subscription registration process. In particular, *Tedesco* states that at step 719 the subscription expiration date is calculated using the current system date/time and the subscription duration stored in the field 416 of the subscription option table record associated with the selected subscription. Col. 7, lines 32-35. Since step 719 is performed at the subscription registration process, using the current time and the subscription duration field 416, it follows that *Tedesco* does not teach calculating a service charge on the basis of how long an item was reserved for a purchaser before being dispensed to the purchaser, which can only be done upon dispensation of the item. Therefore, the claims are believed to be allowable and Applicants respectfully request allowance of the same.

Conclusion

The Applicants firmly believe that the claims are now condition for allowance. If the Examiner maintains that there are any unresolved issues preventing the application for going to issuance, the Examiner is kindly requested to call the attorney signing below for a telephone interview. Applicants desire to move prosecution forward with minimal additional delay, and a telephone interview may be necessary to achieve a mutual understanding of all remaining issues between the Applicants and the Examiner and avoid unnecessary appellate proceedings or continuing prosecution.

Having addressed all issues set out in the Office Action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



Gero G. McClellan

Registration No. 44,227

MOSER, PATTERSON & SHERIDAN, L.L.P.

3040 Post Oak Blvd. Suite 1500

Houston, TX 77056

Telephone: (713) 623-4844

Facsimile: (713) 623-4846

Attorney for Applicant(s)